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May 10, 2011

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

*Via Electronic Filing*

**Re: Applications of Comcast Corporation, General Electric Company and  
NBC Universal, Inc. For Consent to Assign Licenses or Transfer Control of  
Licensees, MB Docket 10-56**

Dear Ms. Dortch,

On May 2, 2011, Free Press submitted in the above captioned docket a report entitled, *No News Is Bad News: An Analysis of Comcast-NBCU Compliance With FCC Localism Conditions*.<sup>1</sup> The report reviews Comcast's initial localism filings, which it must submit on a quarterly basis as a condition of its acquisition of NBC-Universal earlier this year.<sup>2</sup> Free Press intends to issue future reports evaluating subsequent localism filings to track whether and how Comcast is fulfilling its merger commitment to increase local news and public affairs programming on its newly acquired NBC and Telemundo stations.

Free Press found that during the reporting period (1) Spanish language Telemundo owned operated stations (O&Os) aired substantially less local programming than English language NBC O&O stations, and (2) Comcast failed to comply with aspects of the reporting requirement, making it difficult to assess the exact amount and nature of the programming listed. In light of these findings Free Press asked Comcast to correct certain omissions in its reports. Free Press also urged Comcast to remedy the dearth of local programming on Telemundo O&Os by voluntarily increasing investment in and the amount of local news programming across all 15 Telemundo O&Os, and not merely six stations as Comcast initially promised.

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<sup>1</sup> Corie Wright, *No News Is Bad News: An Analysis of Comcast-NBCU Compliance With FCC Localism Conditions*, filed MB Dkt 10-56 (May, 2, 2011), also available at [http://www.freepress.net/files/No\\_News\\_Is\\_Bad\\_News.pdf](http://www.freepress.net/files/No_News_Is_Bad_News.pdf).

<sup>2</sup> *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, Memorandum Opinion and Order, MB Dkt 10-56, FCC 11-4 (rel. Jan. 20, 2011) at Appendix A, §XI(4).

Recently, Comcast filed a reply to Free Press's report.<sup>3</sup> It is evident from Comcast's response that the Free Press report has struck a nerve. It is understandable that Comcast would be embarrassed by the low levels of service provided by Telemundo O&Os, but it does not excuse its lack of response to many of the issues that Free Press raised in its report. It is also disappointing that instead of engaging in a constructive manner Comcast has chosen to adopt an unhelpful and overly defensive posture with regard to transparency and public oversight of its merger promises.

### **The Free Press Report Provides Critical Analysis That Will Facilitate Public And Commission Oversight Of Comcast's Merger Promises**

As an initial matter, Comcast's depiction of Free Press' report is so off-base it can only be explained by willful mischaracterization. Comcast describes the report as "entirely backward looking," and that it is "unclear what Free Press hopes to gain by pointing to what is, literally, 'yesterday's news.'"<sup>4</sup> Yet the purpose of the report could not be clearer. The report is the first in a series of reviews evaluating Comcast's overall compliance with the localism increases it promised as justification for its acquisition of 25 NBC and Telemundo O&Os. Moreover, the report calculates the threshold provision of local news and information to which the additional 1,000 hour increase detailed in Comcast's commitment will apply.

The utility of this analysis speaks for itself. In providing the baseline analyses of local programming on NBC and Telemundo O&O stations, the Free Press report facilitates both FCC and public oversight of Comcast's performance. Free Press will track Comcast's subsequent localism filings to review whether and how Comcast is making progress on the fulfillment of the local news increase.<sup>5</sup> Given the obvious importance of this information, Comcast's feigned query as to the report's purpose is as unhelpful as it is contrived.

### **Comcast's Announcement Of Plans To Increase Programming For *Select NBC Stations* Does Not Address Concerns About The Shortage Of Local Programming On Telemundo O&Os**

Comcast's suggestion that a recently announced local programming increase for *select NBC O&Os* will remedy the lack of local Telemundo programming is also bogus.<sup>6</sup>

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<sup>3</sup> Letter from Lynn R. Charytan, Vice President Legal Regulatory Affairs Comcast Corp., to Federal Communications Commission Secretary Marlene Dortch, filed MB Dkt 10-56 (May, 6, 2011) ("Comcast Letter").

<sup>4</sup> Comcast Letter at 2-3

<sup>5</sup> *No News is Bad News* at 4 and n.9. As Free Press points out in the report, "without the establishment of a baseline amount of programming, there is no way to determine if C-NBCU is following through on its promise to increase local programming production." Indeed, despite repeated requests during the merger review proceeding last year, neither Comcast nor NBC provided local programming levels for the stations in question.

<sup>6</sup> Comcast Letter at 1-2.

The thrust of the Free Press report is that, as compared to NBC O&Os, Telemundo O&Os provide very little local programming. While local news programming represents close to 20 percent of the weekly programming time for NBC O&Os, for most Telemundo O&Os, local news and public affairs represents less than 3 percent of weekly programming time.<sup>7</sup> What is more, Free Press pointed out that these local news numbers were a reflection of resource cutbacks that NBC-Universal made shortly after acquiring Telemundo in 2002.<sup>8</sup>

Notably, Comcast does not dispute the Free Press findings, which are based on NBC and Telemundo O&O stations' self-reported information. Instead, Comcast suggests that because it has announced local programming increases on select NBC O&Os, "Free Press' 'report' rings hollow."<sup>9</sup> Rather, Comcast appears to be the one with the "tin ear" when it comes to the local communities served by Telemundo O&Os. The proposed additional programming to be aired on NBC O&Os in no way addresses the drought in local programming provided by Telemundo O&Os. To suggest otherwise merely adds insult to injury as far as underserved Telemundo O&O audiences are concerned.

Free Press has urged Comcast to remedy the dearth of local Telemundo news perpetuated under the stewardship of NBC-Universal, and to go beyond its current meager commitment to increase news on only six of the 15 Telemundo stations under Comcast's control. When it comes to Telemundo O&Os, NBC broke it – but now that Comcast has bought it, it is the latter's responsibility to fix it by increasing investment in, and production of, local Spanish-language news programming.

Comcast now claims that it will reveal plans to increase local programming on Telemundo O&Os later this summer.<sup>10</sup> Free Press is looking forward this long overdue announcement. In the meantime, Comcast still refuses to identify which Telemundo stations will receive news increases. It also continues to fail to explain why only six of the fifteen communities served by Telemundo O&Os deserve to benefit from additional local news and information programming. Free Press is hopeful that Comcast's subsequent announcement will remedy both of these omissions.

### **Comcast's Refusal To Correct Omissions In Its Localism Filings Raises Concerns About Its Intent To Meaningfully Comply With Its Merger Commitment**

Comcast's attempts to rebut the Free Press critique of its compliance with reporting guidelines also fall far short of their mark. At times, Comcast strains so hard to counter Free Press points that its arguments stray into legal absurdity.

To wit, Comcast asserts that its localism filings are not designed to allow Free Press to decide whether it agrees with Comcast's selection of programming, which it argues

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<sup>7</sup> *No News is Bad News* at 7.

<sup>8</sup> *Id.* at 9-10. Indeed, Free Press acknowledged that "the stations' current performance might not yet reflect the impact of C-NBCU's localism commitment. . . . [and] [a]ccordingly, we anticipate that increases in local news and public affairs programming will be reflected in C-NBCU stations' subsequent quarterly reports. *Id.* at the Executive Summary.

<sup>9</sup> *Comcast Letter* at 2.

<sup>10</sup> *Id.* at 2-3.

“would raise significant First Amendment issues.”<sup>11</sup> But Free Press is not a state actor; it is a public interest group that represents hundreds of thousands of its members across the country. The public is free to pass judgment on whether and how Comcast-owned stations fulfill their local broadcast obligations and Comcast would be well-advised to consider such public input. Indeed, that is the crux of a broadcaster’s responsibility to respond to the needs and wants of its local communities of license. To suggest that it is unconstitutional for the public, or public interest groups, to criticize Comcast’s programming choices is preposterous – and clearly wrong as a matter of law.

In any event, Free Press has not criticized Comcast’s programming choices. It has simply asked that Comcast correct its failure to comply with the requirement to provide a “short description of [each] program” that it claims to fulfill its localism commitment.<sup>12</sup> Rather than comply, Comcast now asserts that such descriptions would “serve *no* purpose under the Order.”<sup>13</sup> But as Free Press pointed out, the absence of even short descriptions of programs makes it difficult for the public and the FCC to determine whether the programming listed actually qualifies toward the 1,000 hour increase in local programming.<sup>14</sup> For example, Free Press tried to locate a description for *The Rundown*, a show that is listed in the Localism Report for WMAQ-NBC in Chicago. An online programming guide describes program as: “Stories in the news spotlight what’s happening and what matters in *New York* region.”<sup>15</sup> A program produced in and focused on issues affecting the New York region is not “local” to Chicago in any sense of the term. But because Comcast itself provided no program in its localism filings it is unclear whether the online programming guide contained an error or whether some of the “local” programming reported by Comcast was not actually “local.”

Contrary, to Comcast’s suggestion, Free Press has not passed judgment on Comcast’s editorial discretion. It has merely raised the legitimate question of whether the programming reported complies with the requirement that the additional local programming aired by O&Os comprise “original news and information, locally produced.”<sup>16</sup> Despite this perfectly reasonable request for clarification as to why Comcast would claim a New York-focused program as local to Chicago, Comcast has ignored the issue and now appears to be reneging on the plain terms of the reporting requirement. This peculiar reticence to provide even the most basic information about its compliance suggests a lack of transparency that is cause for concern.

In addition to refusing to provide program descriptions, Comcast wants to further obscure its merger promise performance by counting commercial spots as part of its local news tally. In its report, Free Press found that over 1,000 hours of the time claimed as local programming comprised interstitial commercials.<sup>17</sup> In response, Comcast claims that it

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<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Merger Order* at Appendix A, §XI(4).

<sup>13</sup> *Comcast Letter* at 3.

<sup>14</sup> *No News is Bad News* at 10.

<sup>15</sup> Listing available at <http://tvlistings.zap2it.com/tv/the-rundown/EP01246382>.

<sup>16</sup> *Merger Order* at ¶199.

<sup>17</sup> *No News is Bad News* at 5.

may count commercial spots as part of its commitment to locally produce and locally air news and information programming.<sup>18</sup> This contravenes the plain language of the FCC's *Merger Order*, which directs Comcast-controlled O&Os to locally produce an additional 1,000 hours per year of original, local news and information programming.<sup>19</sup> Commercials do not constitute local news or information programming, nor are they usually produced by NBC or Telemundo O&Os. Thus, they should not be reported as local programming hours under the terms of the condition.

Comcast's rather dubious (and only) support for this contention is that when fulfilling their children's E/I programming reporting requirement (Form 398), broadcasters often count commercials towards the programming totals.<sup>20</sup> But in adopting the localism commitment, the *Merger Order* makes no reference to Form 398 or the Commission's rules regarding E/I compliance. Nor is there any reason to suggest that the FCC intended commercials to count towards Comcast's local news tallies when, as demonstrated above, the plain language of the order excludes the counting of commercials. In any event, the FCC's children's educational programming requirements are a particularly poor justification for why Comcast should be able to count any and all interstitial commercials as part of its local programming promise. All children's programming is subject by statute and FCC regulation to very strict limits on both the amount and types of commercial content that may be aired during reported programming.<sup>21</sup> Non-children's programming is not subject to any commercial restraints. Were Comcast permitted to count as much commercial time as it chooses, as well as claim that time as local programming aired in service of its merger obligations, it would yield a result that is both ridiculous and patently contrary to the public interest.

In conclusion, Comcast's recent response is nothing more than an obvious and specious attempt to discount a report tracking Comcast's observance of its merger commitments. Regrettably, in so doing, Comcast has missed an opportunity to demonstrate that it is prepared to take seriously its local broadcast service, and to remedy the dearth of service to Telemundo audiences in particular.

Comcast should spend less time being defensive, and invest more energy into being responsive to the local communities. It would go a long way towards building public confidence in its promise to better serve the local audiences of its newly acquired stations.

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<sup>18</sup> *Comcast Letter* 3.

<sup>19</sup> *Merger Order* at Appendix A, §XI(2)(a)(b).

<sup>20</sup> *Comcast Letter* 3-4.

<sup>21</sup> See Children's Television Act of 1990 § 102, 47 U.S.C. § 303a; 47 C.F.R. § 73.670. Thus, to the extent that broadcasters have adopted the practice of counting commercials in their 398 Reports, the public and the FCC may be assured by virtue of these commercial limits that commercial advertising will only comprise a small portion of the time reported.

Respectfully submitted,  
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